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2013 FEB 20 P 3:50

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County of Santa Clara, California

By: _____

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9

10 IN THE SUPERIOR COURT FOR THE
11 COUNTY OF SANTA CLARA

12 SAN JOSE POLICE OFFICERS
ASSOCIATION,

13 Plaintiff,

14 v.

15 CITY OF SAN JOSE, BOARD OF
16 ADMINISTRATION FOR POLICE AND
FIRE RETIREMENT PLAN OF CITY OF
17 SAN JOSE, and DOES 1-10 inclusive.,

18 Defendants.

19 AND RELATED CROSS-COMPLAINT
20 AND CONSOLIDATED ACTIONS
21

Case No. 1-12-CV-225926

[Consolidated with Case Nos. 112CV225928,
112CV226570, 112CV226574, 112CV227864]

DECLARATION OF JENNIFER
SCHEMBRI IN SUPPORT OF CITY OF
SAN JOSE'S OPPOSITION TO
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION

Date: March 5, 2013
Time: 9:00 a.m.
Dept.: 8

Complaint Filed: June 6, 2012
Trial Date: None Set

BY FAX

22 I, JENNIFER SCHEMBRI, declare:

23 1. I am the Deputy Director of the Office of Employee Relations in the City
24 Manager's Office for the City of San Jose (hereinafter, "City"). I submit this declaration in
25 support of the City's Opposition to Plaintiffs' Motion for a Preliminary Injunction. I have
26 personal knowledge of the facts set forth below and if called as a witness I could and would testify
27 competently thereto.

28 ///

Case No. 112CV225926

DECLARATION OF JENNIFER SCHEMBRI IN SUPPORT OF CITY OF SAN JOSE'S
OPPOSITION TO MOTION FOR A PRELIMINARY INJUNCTION

2. I have been employed by the City of San Jose in the Office of Employee Relations since October 2004. During that time, I have been involved in the formulation of City policies in connection with employee compensation and benefits and for the negotiation of wages, benefits and other terms and conditions of employment with the labor unions that represent City employees.

Measure B

3. In March 2012, the City Council voted to place Measure B on the ballot to amend the City Charter's retirement provisions. In June 2012, the voters enacted Measure B. Soon after, City labor unions, employees and retirees filed the five actions that were later consolidated under the caption for this case.

Employee Contributions Towards Pension Plans [§ 1506-A]

4. Measure B Section 1506-A requires employees to make additional payments in increments of 4% of pensionable pay per year, up to a maximum of 16% of pensionable pay per year, but no more than 50% of the costs per year to amortize any pension plan unfunded liabilities. Measure B states that the starting date for compensation adjustment under Section 1506-A shall be June 23, 2013, and the City will not make Section 1506-A effective prior to that date.

Employee Contributions Towards Retiree Healthcare [§ 1512-A]

5. Measure B requires that: “Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.” (Measure B § 1512-A: Retiree Healthcare.)

6. In the case of both the Federated and the Police and Fire Retirement Plans, the Municipal Code requires that employees and the City make contributions towards retiree medical benefits on a one to one ratio. (Municipal Code §§ 3.28:385(C), 3.36.575(D).)

7. The City has agreements with most City unions for employees and the City to continue paying the cost of retiree healthcare on a one-to-one ratio, and to phase in additional employee and City contributions, in the same ratio, over a five year period to eventually fully fund all retiree healthcare costs, including unfunded liabilities. The agreements with the unions representing police officers and firefighters are slightly different, and include a 10% cap on

1 employee contributions, with percentages above the cap subject to meet and confer procedures.

2 8. The City and unions entered into these agreements for a five year phase in
3 beginning in 2009, except that the City and the firefighters union entered into an agreement in
4 2011. The City is adhering to these agreements. The City is currently negotiating with the
5 Federated City unions over a revised phase in of contributions to fully fund all retiree healthcare
6 costs, including unfunded liabilities.

7 **Disability Retirement Benefits [§ 1509-A and § 1509-A(c)]**

8 9. Section 1509-A of Measure B contains requirements for City employees to be
9 eligible for disability retirement. Section 1509-A(c) of Measure B requires that determinations of
10 disability shall be made by an independent panel of medical experts, with a right to appeal to an
11 administrative law judge.

12 10. The City has not created a timetable for the implementation of these disability
13 retirement sections of Measure B, and any implementing ordinances would not have an effective
14 date before July 1, 2013.

15 **Supplemental Retiree Benefit Reserve [§ 1511-A]**

16 11. Measure B states, "The Supplemental Retiree Benefit Reserve shall be
17 discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental
18 payments to retirees in addition to the benefits authorized herein shall not be funded from plan
19 assets." (Measure B § 1511-A.)

20 12. Under the Municipal Code, the Supplemental Benefit Reserve ("SRBR") was a
21 feature of both the Federated and Police and Fire retirement plans. The SRBR provided retirees
22 with a so-called "13th check" in certain years on top of their other existing pension benefits (a
23 monthly pension; a retirement healthcare premium subsidy; and a 3% yearly COLA).

24 13. For the last three years, the City has suspended payments under the Supplemental
25 Benefit Retiree Benefit Reserve. No payments have been made to retirees.

26 14. After the enactment of Measure B, the City Council enacted Ordinance Number
27 29174 amending the Municipal Code to terminate the Federated SRBR and return its funds to the
28 general retirement fund. The ordinance became effective on January 4, 2013. The City Council

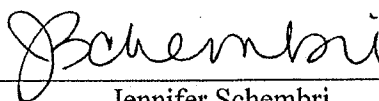
1 also enacted an ordinance amending the Municipal Code to terminate the Police and Fire SRBR
2 and return its funds to the general retirement fund. The ordinance was enacted on January 29,
3 2013, and will become effective on March 1, 2013. The City has no plans for any further
4 legislative action in connection with the SRBR.

5 15. The staff for the Federated Retirement System has reported that it will make an
6 accounting transaction to discontinue SRBR in June 2013 but also reported that the discontinuance
7 "represents an accounting transaction that can be tracked and reversed in the future should it be
8 deemed necessary." Attached as Exhibit 1 is a true and correct copy of a memorandum dated
9 January 9, 2013, from Veronica Niebla to Board of Administration for the Federated Employees'
10 Retirement System on the subject of "Supplemental Retiree Benefit Reserve (SRBR)
11 Accounting." The Board for the Police and Fire Retirement Plan has not finalized any action on
12 the SRBR for the Police and Fire Plan.

13 **Suspension of Cost of Living Adjustments in the Event of an Emergency [§ 1510-A]**

14 16. Measure B Section 1510-A authorizes the suspension of retiree cost of living
15 adjustments ("COLAS") in the event of a fiscal and service level emergency. The City has no
16 plans to declare a fiscal and service level emergency.

17
18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct and that I executed this declaration on February 20, 2013 in San Jose,
20 California.

21
22 

23 Jennifer Schembri
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EXHIBIT 1

1.66

Memorandum

**TO: Board of Administration for the
Federated City Employees'
Retirement System**

FROM: Veronica Niebla

SUBJECT: Supplemental Retiree Benefit Reserve (SRBR) Accounting

DATE: January 9, 2013

Approved

Dr. R. S. K.

Date 1/09/13

INFORMATIONAL

BACKGROUND

At the December 2012 Board meeting the Board discussed City Council Ordinance No. 29174 discontinuing the Federated City Employees' Retirement System (System) Supplemental Retiree Benefit Reserve (SRBR) as of January 4, 2013.

The SRBR is a reserve that represents funds required by statute to be set aside from the Retirement Fund's net investment earnings to provide supplemental benefits to eligible retirees and beneficiaries. The reserve represents the accumulation of 10% of total accumulated excess earnings of the Retirement Fund plus credited interest on the reserve balance at the lesser of the Plan's actual rate of return or the actuarial rate of return for the fiscal year, but never less than 0%, minus distributions to eligible retirees and beneficiaries from the reserve. Interest on the SRBR balance is calculated and transferred at the end of the fiscal year. Excess earnings transfers are computed based on audited financial statements and if applicable the transfer is made effective on the first day of the next fiscal year by Board Resolution.

Prior to issuance of the above ordinance to discontinue the SRBR, San José City Council adopted Resolution number 75635, on November 16, 2010 and amended in Resolutions 76204 and 76235, to suspend distributions of funds from the SRBR for fiscal years 2010-2014.

ANALYSIS

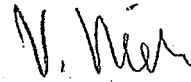
At the December 2012 Board Meeting the Board approved the June 30, 2012 Pension Valuation prepared by the System's actuary, Cheiron. Page 14 of the valuation includes a roll forward table of the reserve balances, including the SRBR reserve with an ending balance of \$43,109,000, and the development of excess earnings and primary interest crediting amounts, both of which were zero for the SRBR as a result of the System's performance; attached is copy of page 14 for reference.

The accounting transaction to discontinue SRBR will be performed by accounting staff in June 2013 as part of the year end reserve transfers that are recorded in preparation of the annual financial statements as required by municipal code. An accounting entry will be recorded with a transaction date of January 4, 2013 to remove the SRBR balance (which represents the accumulation of 10% of excess earnings transfers and the interest on the excess earnings) and transfer the assets to the General Reserve (which received the remaining 90% of excess earnings). The assets of the SRBR were comingled and held in the

same custodian bank account for investment purposes and will not require or incur investment transfer costs.

CONCLUSION

The discontinuation of the SRBR represents an accounting transaction that can be tracked and reversed in the future should it be deemed necessary. However, if the reversal of the SRBR discontinuation is deemed necessary the Board's actuary would need to calculate the retroactive excess earnings, SRBR primarily interest amounts, and additional contribution amounts for Board approval. Upon Board approval the accounting staff would book the related accounting entries in the System's financial statements. The entries would be audited as part of that year's financial statements per the normal audit cycle.



Veronica Niebla
Principal Accountant

**FEDERATED CITY EMPLOYEES' RETIREMENT SYSTEM
JUNE 30, 2012 ACTUARIAL VALUATION**

**SECTION II
ASSETS**

Table II-2 Development of Excess Earnings as of June 30, 2012				
	Retirement Fund Reserve			
	Employee	SRBR	General	Total
1. Total Earnings				\$ (54,067)
2. Balance, July 1, 2011	\$ 192,822	\$ 43,109	\$ 1,055,554	\$ 1,291,485
3. Net Cashflow	\$ (15,016)	\$ 0	\$ (14,600)	\$ (29,616)
4. Crediting Rate	3.00%	0.00%	0.00%	
5. Primary Interest Crediting	\$ 6,034	\$ -	\$ -	\$ 6,034
6. Balance, June 30, 2012	\$ 183,840	\$ 43,109	\$ 1,040,954	\$ 1,267,903
7. Excess Earnings		\$ -	\$ (60,101)	\$ (60,101)
8. Balance, July 1, 2012	\$ 183,840	\$ 43,109	\$ 980,853	\$ 1,207,803

Amounts in thousands

B. Actuarial Value of Assets

To determine on-going funding requirements, most pension funds utilize an actuarial value of assets that differs from the market value of assets. The actuarial value of assets is based on averaging or smoothing year-to-year market value returns for purposes of reducing the resulting volatility on contributions.

The actuarial value is calculated by recognizing 20% of each of the prior four years of actual investment experience relative to the expected return on the actuarial asset value (7.5% for 2011-2012, 7.95% for 2010-2011, 7.75% for 2009-2010, 8.25% for prior years). The expected return on the actuarial value of assets is determined using the System's actual cash flows and the assumed rate of return. The balance of the actual investment experience is recognized in a similar fashion in future years. (See Appendix B for further explanation of the asset valuation method).